

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: A-84336

DATE: AUG 28 1975

MATTER OF: Use of maiden name on payrolls by married women employees

DIGEST: A woman, notwithstanding her marriage, has the right to use her maiden name on Government checks and payrolls provided that she uses the same name consistently on all Government records. This is, however, subject to any general regulation that might be issued by the Civil Service Commission. In addition, a female employee may be carried on the payroll as Ms., regardless of her marital status, if she so desires. 19 Comp. Gen. 203 (1939) modified.

This action is in response to a request by the Railroad Retirement Board for review of Comptroller General decision A-84336 dated August 15, 1939, published at 19 Comp. Gen. 203, which held that:

"The Government has the right to designate a married woman by the surname of her husband on pay rolls and checks covering compensation for services rendered by her, whether or not she elects to use her husband's surname, unless and until the name acquired by marriage be changed by appropriate court action, and there appears no impelling reason for changing the long established general rule that, when a woman employee of the Government marries, the surname of her husband is to be used on the pay roll instead of her maiden surname, but the General Accounting Office will not object to the continuance of the use of her maiden name where an employee continued its use after her marriage for practically all purposes, and the administrative office desires the continued use of her maiden name on the pay rolls. 4 Comp. Gen. 165, amplified."

In setting the policy 4 Comp. Gen. 165 (1924) relied upon legal doctrines and cultural mores which have been seriously eroded by

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accelerating changes in the legal and social status of woman and the repudiation of a common law principle relative to this subject. On page 167 of 4 Comp. Gen. 165 it was stated that " * * * marriage is an institution contemplating homes and families. Each family is a unit * * * and it can hardly be imagined of husbands, wives, and children composing the same family bearing different names. The law in this country that the wife takes the surname of the husband is * * * well settled." The cited principle is stated on page 204 of 19 Comp. Gen. 203 as follows: "Notwithstanding any right a married woman may have to use and be known by her married name, I assume it would not be questioned that a woman upon her marriage legally acquires the surname of her husband regardless of whether she does or does not elect to use it."

With growing recognition of and interest in women's rights, an increasing number of married women retain their maiden names in their work or profession. In the past, a Government agency had discretion in determining whether a married woman employee could be designated by a name other than her husband's surname on payrolls and checks. This discretion now seems outdated in light of the growing trend to allow a married woman to use a name other than her husband's surname. See Custer v. Bonadies, 318 A.2d 639 (Conn. Super. Ct. 1974); Stuart v. Board of Supervisors of Elections, 295 A.2d 223 (Md. 1972); State v. Green, 177 N.E.2d 616 (Ohio Ct. App. 1961); Kruzel v. Podell, 226 N.W.2d 458 (Wisc. 1975); Dunn v. Palermo, 522 S.W.2d 679 (Tenn. 1975); and Walker v. Jackson, 391 F. Supp. 1395 (E.D. Ark. 1975).

In Kruzel one of the most recent "name" cases, the Wisconsin Supreme Court confronted the question of whether a woman upon marriage assumes her husband's surname by law. The court chose to accept the view expressed in Custer, Green, Stuart, and others, that a married woman adopts her husband's surname only by custom, and that under common law a person may adopt any name as long as he or she does so in good faith and with no intent to deceive or defraud. 226 N.W.2d at 463. Stuart had earlier held that "the mere fact of marriage does not, as a matter of law, operate to establish the custom and tradition of the majority as a rule of law binding upon all." 295 A.2d 223, at 226.

In the Custer case which involved a mandamus action to compel voting registrars to register women in their maiden names, the court held that women have a right to register to vote in their maiden names and that the voter registrar is obligated to correct voting lists to reflect a change of name for a woman upon marriage only in those cases where the woman in

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fact changes her name. The Custer court also noted the modern trends in our society as reflected in these recent name cases:

" * * * We live in the age of the women's rights movement, when federal law prohibits discrimination in employment on account of sex, [citing Civil Rights Act of 1964 Section 703(a)(1), 78 Stat. 255, 42 U.S.C. Section 2000e - 2(a)(1) (1970)] when the equal rights amendment has passed the Congress (March 22, 1972) and * * * when women march in the streets to demand equal status before the law, and when some women go to court for the right to vote in their 'own' names. It hardly seems the time * * * to accept an outdated rule of common law requiring married women to adopt their spouse's surnames contrary to our English common-law heritage and to engraft that rule as an exception to the recognized right of a person to assume any name that he or she wishes to use." (318 A. 2d at 641.)

In Walker, a 1973 decision by a United States District Court of three judges, the court held that a woman may register to vote in any surname in Arkansas as long as she does not do so fraudulently. Since Arkansas common law permits a person to change his name at will, the court also concluded that it is unconstitutional as violative of the Equal Protection Clause of the Fourteenth Amendment to require use of the prefix Miss or Mrs. for women registering to vote. The ground for that holding was that Arkansas voting laws did not require a man to show his marital status and there was no reasonable or rational basis for requiring such disclosure in the case of a woman. Cf. Forbush v. Wallace, 341 F. Supp. 217 (M.D. Ala. 1971), affirmed 405 U.S. 970 (1972).

Thus in the years since our earlier decisions on this subject, the courts have shifted from a view that the common law requires the wife to take her husband's surname to the view that a married woman adopts her husband's surname only by custom and that under the common law she is not bound to do so.

In the light of the present social attitudes concerning the status of women and the current trends in the case law in the area of equal rights for women, we believe that 19 Comp. Gen. 203 should be modified. Therefore, we hold that a married woman has the right to be designated on agency payroll records by her maiden name if she desires to do so.

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However, in order to eliminate any confusion, the same name should be used consistently on all Government records.

Similarly, a woman employee may elect to use the prefix Ms. on the rolls instead of the traditional forms of Miss or Mrs.

Because of the Civil Service Commission's general jurisdiction over Government personnel matters, this decision is subject to any personnel regulations which may be issued by the Commission.

R. F. KELLER

Acting Comptroller General
of the United States